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In Propria Persona

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TODD R. G. HILL, et al,

Plaintiffs

vs.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

CIVIL ACTION NO. 2:23-cv-01298-JLS-BFM

The Hon. Josephine L. Staton
Courtroom 8A, 8th Floor

Magistrate Judge Brianna Fuller Mircheff
Courtroom 780, 7th Floor

PLAINTIFF'S OBJECTIONS AND REQUEST FOR DE NOVO REVIEW OF MAGISTRATE'S REPORT AND RECOMMENDATIONS (DOCKET 348)

NO ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

Cases

Statutes

Rules

PLAINTIFF'S OBJECTIONS AND REQUEST FOR DE NOVO REVIEW OF MAGISTRATE'S REPORT AND RECOMMENDATIONS (DOCKET 348)

TO THE HONORABLE COURT AND ALL PARTIES OF RECORD:

The Report and Recommendation (Dkt. 348) must be rejected because it rests on an incomplete and materially misleading factual foundation. Most notably, it **fails to acknowledge that Peoples College of Law was shut down by the State Bar of California on May 31, 2024, after years of procedural violations and noncompliance.** This regulatory revocation, issued by the institution charged with legal education oversight, undermines the R&R's core narrative that Defendant conduct was merely negligent or mistaken. The omission of this dispositive fact renders the R&R's fraud, RICO, and negligence analyses procedurally defective and legally untenable. Plaintiff respectfully objects to the R&R on these and other grounds outlined below, and requests that the Court reject its recommendations in full.

While the R&R acknowledges the Fifth Amended Complaint and pending motion for leave (Dkts. 310, 311), it improperly declines to analyze the more detailed and curative allegations within it. This failure creates a legally deficient record under *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).

The R&R's interpretation of Rule 9(b) ignores controlling precedent, misapplies pleading standards, and overlooks critical facts in the record and supplemental complaints. Plaintiff respectfully requests that the District Judge reject these portions of the Recommendation and find that Plaintiff has adequately pleaded a RICO claim under applicable Ninth Circuit authority.

The R&R's blanket denial FRE 201 judicial notice requests implies that the factual material Plaintiff sought to introduce (including Spiro's judicial admissions) is insufficient to render the 5AC plausible. Plaintiff argues this constitutes a failure to fully consider facts that could cure deficiencies,

running counter to the liberal amendment policy that seeks to decide cases on their merits, with a complete record. Importantly, the Court's recommended refusal to grant leave conflicts with *Foman v. Davis*, 371 U.S. 178 (1962).

I. PLAINTIFF'S PARTIAL OBJECTION AND REQUEST FOR DE NOVO REVIEW OF THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (DKT. 348)

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), Plaintiff respectfully submits this partial objection to the Magistrate Judge's Report and Recommendation (Dkt. 348) and requests **de novo review** of those findings and conclusions that recommend dismissal of Plaintiff's RICO claim and related allegations under Rule 12(b)(6). Plaintiff objects to the R&R's recommendation that the Court decline to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c)(3). (Dkt. 348 at 25.) While the Court may decline supplemental jurisdiction when all federal claims have been dismissed, that discretion does not apply where there exists an independent basis for jurisdiction, such as in the instant case, where diversity under 28 U.S.C. § 1332(a) applies and thus there is independent original jurisdiction. (See FAC ¶ 27).

A. NO OBJECTION TO FINDINGS IN PLAINTIFF'S FAVOR

Plaintiff does **not** object to the R&R's conclusion that the Fourth Amended Complaint satisfies the requirements of Fed. R. Civ. P. 8, or to the Magistrate's recognition that the Fourth Amended Complaint presents intelligible allegations and a comprehensible structure. (Dkt. 348 at 6–7.)

Plaintiff appreciates the Court's acknowledgment that the pleadings are organized and that the claims are framed in a manner that allows the Court and Defendants to understand the nature of the allegations.

B. OBJECTION TO DISMISSAL OF RICO CLAIM AND ASSOCIATED RULE 9(B) ANALYSIS

However, Plaintiff respectfully objects to the R&R's conclusions that:

1. The Fourth Amended Complaint fails to meet Rule 9(b) standards for pleading wire and mail fraud;

2. Plaintiff fails to allege fraudulent intent or plausible predicate acts;

3. The RICO enterprise and pattern requirements are insufficiently pleaded;

4. Exhibits 1 and 9 undermine Plaintiff's theory of intentional misconduct;

5. The factual allegations fail to establish harm or causation for purposes of RICO standing.

These conclusions rest on **misstatements of law and mischaracterizations of the record**, including improper inferences against the Plaintiff, and a failure to incorporate judicially noticed documents submitted under FRE 201 (e.g., Dkts. 197, 199, 329, 332), as well as the operative Fifth Amended Complaint and pending Rule 15(a)(2) motion (Dkts. 310, 311, 313-318).

C. LEGAL BASIS FOR DE NOVO REVIEW

Because the R&R is dispositive of Plaintiff's RICO cause of action, the District Court must conduct a **de novo review** of all matters properly objected to. See *United States v. Raddatz*, 447 U.S. 667, 673 (1980); Fed. R. Civ. P. 72(b)(3). The Court may accept, reject, or modify the recommendation in whole or in part.

De novo review is particularly warranted here where:

1. The R&R excludes the Fifth Amended Complaint from consideration despite its procedural relevance;

2. The record includes detailed, judicially noticed exhibits that corroborate predicate acts and intent;

3. The allegations, when properly construed, satisfy Rule 9(b) as relaxed for systemic fraud claims;

4. The findings fail to credit selective remediation and omission as evidence of intentional concealment.

II. SUBJECT MATTER JURISDICTION EXISTS UNDER 28 U.S.C. § 1332(A): COMPLETE DIVERSITY IS ESTABLISHED

Plaintiff asserts that the Court retains jurisdiction over this action not only under federal question jurisdiction (28 U.S.C. § 1331) due to his RICO claim, but also under **diversity jurisdiction** (28 U.S.C. § 1332(a)), which independently supports adjudication of Plaintiff's supplemental state law claims. The record reflects complete diversity of citizenship between Plaintiff and all Defendants, and the amount in controversy exceeds $75,000.

A. FEDERAL DIVERSITY JURISDICTION REMAINS INDEPENDENT AND INTACT

Plaintiff is a domiciled resident of Bell County, Texas. He has resided in Texas continuously since **November 2023**, with the intent to remain indefinitely. Plaintiff owns property in Texas, has changed his mailing and voter registration address, and has declared Texas residency in other legal and financial contexts. These facts satisfy the standard for citizenship under *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citizenship is determined by domicile, not current residence).

Even if the Court were to dismiss Plaintiff's RICO claims under Rule 12(b)(6), **supplemental jurisdiction under § 1367(c) should not be presumed to vanish**, as this case also qualifies for **independent adjudication under 28 U.S.C. § 1332(a)**.

Plaintiff respectfully requests that the Court acknowledge the diversity basis of jurisdiction and permit state law claims to proceed, even if federal claims are dismissed, consistent with *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (district court retains discretion, not obligation, to decline supplemental jurisdiction).

B. ALL DEFENDANTS ARE CITIZENS OF CALIFORNIA OR OTHER NON-TEXAS STATES

None of the named Defendants are citizens of Texas. All are:

1. California-resident individuals (e.g., Spiro, Peña, Bouffard, Zuniga),
2. California-registered entities (Peoples College of Law),
3. Or associated with California law firms (Haight Brown & Bonesteel LLP attorneys).

No Defendant has alleged, argued, or provided any evidence that they are domiciled in Texas.

Therefore, complete diversity exists. See *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806) (diversity jurisdiction requires all plaintiffs to be diverse from all defendants).

C. THE AMOUNT IN CONTROVERSY EXCEEDS $75,000

Plaintiff alleges damages far exceeding the jurisdictional threshold, including:

1. Loss of bar eligibility and licensure,
2. Professional and reputational harm,
3. Intentional and/or negligent infliction of emotional distress,

4. Loss of income and earning capacity,

5. Declaratory and injunctive relief,

6. Punitive damages.

Given the nature of the harms pled, even a conservative valuation of the educational, professional, and compensatory losses exceeds **$300,000**. This satisfies the requirement of *28 U.S.C. § 1332(a)* and *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (a good-faith allegation of the amount suffices unless legally impossible).

Thus, even if the Court were to dismiss Plaintiff's RICO claims under Rule 12(b)(6), supplemental jurisdiction under § 1367(c) should not be presumed to vanish, as this case also qualifies for independent adjudication under 28 U.S.C. § 1332(a).

Plaintiff respectfully requests that the Court acknowledge the diversity basis of jurisdiction and permit state law claims to proceed—even if federal claims are dismissed—consistent with *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (district court retains discretion, not obligation, to decline supplemental jurisdiction).

III. THE REPORT AND RECOMMENDATION MATERIALLY OMITS THE STATE BAR'S REVOCATION OF PCL'S AUTHORITY TO OPERATE, UNDERMINING ITS NEGLIGENCE-ONLY FRAMING

The Magistrate Judge's Report and Recommendation (Dkt. 348) fails to address a critical and indisputable fact: **Peoples College of Law was shut down by the State Bar of California on May 31, 2024, following a protracted pattern of regulatory violations, noncompliance, and misconduct.** This omission undermines the core premise of the R&R's fraud and RICO analysis, namely, that Defendants' conduct perhaps amounted to mere "confusion" or "misunderstanding" of credit standards.

Revocation of an institution's authority to operate is **not the likely administrative consequence of innocent error or mere negligence**. Rather, it reflects the State Bar's formal finding that PCL had engaged in systemic violations of state standards, violations so persistent that corrective oversight was deemed futile.

The R&R's complete failure to adequately acknowledge the closure and the State Bar's findings obscures key circumstantial evidence of scienter, which is relevant not only to the RICO and fraud claims, but also to the Plaintiff's theory of intentional misrepresentation and institutional deception. Where the record includes evidence of long-term administrative warnings, repeated violations, and eventual closure, the Court may not plausibly conclude, as it does here, that Plaintiff has failed to allege a plausible inference of intent or reckless disregard.

This omission constitutes clear error, as it directly impacts the viability of Plaintiff's claims under Rule 12(b)(6), and independently warrants rejection of the R&R under Rule 72(b)(3).

IV. THE R&R MISCHARACTERIZES EXHIBITS 1 AND 9 AND DRAWS INFERENCES CONTRARY TO THE RECORD

The R&R mischaracterizes the email exchanges in FAC Exhibits 1 and 9 as suggesting confusion or a lack of fraudulent intent. However, the R&R essentially ignores the eight other exhibits present in the FAC as well as Docket 199, judicially noticed and properly before the Court, establishes that Defendants were aware of noncompliance issues and transcript miscalculations, failed to correct them for all affected students, and selectively addressed only certain cases while receiving clear guidance from the State Bar. This is not an inference of negligence, it is an inference of intentional

concealment consistent with predicate acts of wire and mail fraud under 18 U.S.C. §§ 1341 and 1343. Accordingly, the R&R's interpretation of these exhibits is clearly erroneous and must be rejected.

A. THE R&R MISSTATES THE EVIDENTIARY IMPACT OF EXHIBITS 1 AND 9

Plaintiff objects to the Magistrate Judge's assertion that Exhibits 1 and 9 "undermine" the plausibility of Plaintiff's core allegation, that Defendants manipulated transcripts in an effort to conceal institutional failures at Peoples College of Law (PCL). (R&R at 15.) This conclusion misstates both the factual content of the exhibits and the legal standard governing plausibility at the pleading stage.

The FAC exhibits and Docket 199 include evidence that Defendants were aware of transcript errors but refused to fix them for a period of years.

In **Exhibit C** to Docket 199 (emails disclosed by the State Bar in response to CPRA requests), the following is shown:

1. **April 2022 Email Chain (referenced in R&R)**: Far from reflecting innocent confusion, the email exchange shows the State Bar explicitly informs PCL that their award of 2 units for 3-quarter-credit-hour courses was incorrect under existing regulatory standards.

Despite having already **received this instruction months earlier**, PCL had **not corrected** Plaintiff's transcript or notified similarly affected students. There is **no mention of efforts to systemically remedy** past errors, despite clear awareness of the miscalculation's scope.

B. THE EXHIBITS CONFIRM, AND CANNOT CONTRADICT, CONCEALMENT AND SELECTIVE DISCLOSURE

Exhibit 1 (at pages 74–83) and Exhibit 9 (at pages 172–76) are email chains reflecting internal and external communications involving Defendant Spiro and others. Far from disproving Plaintiff's theory, these documents support the allegation that:

1. PCL became aware of transcript and credit miscalculations affecting multiple students,
2. Rather than undertake a systemic correction, Spiro and other Defendants selectively addressed only one student's transcript (Nancy Popp),
3. No effort was made to inform or correct transcripts for other affected students, including Plaintiff, although Defendants were aware of unavoidable harm student suffered upon transfer,
4. Partial disclosure to the State Bar occurred only after internal acknowledgment and under external pressure.
5. The record shows Defendant Spiro's claim that he **received State Bar instructions not to retroactively change transcripts without approval**, yet Defendant Spiro **proceeds to change Popp's anyway**, without applying the same fix for others.

In one key communication properly before the Court, Spiro writes that he has "corrected Nancy Popp's transcript," but he declines to address or correct the same discrepancies for Plaintiff and others. This selective remediation is not exculpatory; it is evidence of a conscious strategy to limit exposure while continuing to conceal the scope of institutional error and leaving other students with defective records, thus **undermining any good faith explanation**.

C. CONCEALMENT FOLLOWED BY STRATEGIC DISCLOSURE IS CONSISTENT WITH FRAUDULENT INTENT

The R&R implies that because Defendants "quickly" communicated with the State Bar once the problem was "brought to their attention," Plaintiff's theory is implausible. This conclusion misapplies both logic and law.

Fraudulent concealment often includes:

1. Initial nondisclosure,
2. Limited correction to avoid liability,
3. Partial truth-telling to mislead regulators or third parties about the true scope of misconduct.

This dynamic is not unusual; it is **textbook fraudulent damage control**. See *Eclectic Props. East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996–97 (9th Cir. 2014) (courts may infer fraudulent intent from selective disclosure, repeated misconduct, and foreseeable harm). Thus, the fact that Defendants disclosed *something* to the State Bar **after** the problem surfaced does not negate Plaintiff's claim; it substantiates it.

That is exactly what Plaintiff pleads: PCL and Spiro *knew* the credit discrepancies existed across transcripts, but corrected only a subset and obscured the full impact, especially from Plaintiff and similarly situated students.

This behavior does not undermine Plaintiff's theory because it exemplifies conscious concealment followed by damage control.

D. THE R&R IMPROPERLY DRAWS INFERENCES AGAINST THE PLEADER

At the Rule 12(b)(6) stage, the Court must construe all facts and inferences in the light most favorable to the non-moving party. See *Twombly*, 550 U.S. at 555; *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Yet the R&R improperly draws inferences **against** Plaintiff by interpreting Exhibits 1 and 9 as rebuttal evidence, rather than corroborating proof of partial concealment and selective remediation.

The assertion that Exhibits 1 and 9 "undermine" Plaintiff's theory is not supported by the documents themselves or by governing law. These exhibits, far from refuting Plaintiff's claims, lend

support to the central RICO theory that Defendants manipulated educational records to obscure systemic academic and regulatory failures while misleading both students and regulatory bodies.

Exhibits 1 and 9 confirm that Defendants selectively disclosed transcript discrepancies only after the issue had already caused harm and only for certain students. Defendants' partial disclosure to regulators, while simultaneously concealing the broader scope from impacted students like Plaintiff, is entirely consistent with a fraudulent concealment scheme and later discovery avoidance. As such, the cited exhibits are **not contradictory** because they are **corroborative** of the pleading.

V. THE R&R MISCHARACTERIZES PLAINTIFF'S ALLEGATIONS OF FRAUD AS A MERE CONTRACT DISPUTE, CONTRARY TO NINTH CIRCUIT PRECEDENT AND RICO DOCTRINE

The R&R fundamentally misapprehends the nature of Plaintiff's RICO allegations by characterizing them as, at most, a contractual dispute between a student and a school. This conclusion not only disregards key factual allegations and incorporated exhibits but also contravenes established Ninth Circuit authority regarding fraud-based predicate acts under the Racketeer Influenced and Corrupt Organizations Act ("RICO").

A. PLAINTIFF ALLEGES A FRAUDULENT SCHEME—NOT AN ADMINISTRATIVE OVERSIGHT

At the heart of the RICO claim is the allegation that Defendants, including Spiro, Peña, Bouffard, and others, knowingly and repeatedly misrepresented PCL's bar eligibility, accreditation status, and course compliance in order to induce Plaintiff and similarly situated students to pay tuition for a program that did not qualify them for bar admission. (See 4AC ¶¶ 65–66, 74, 112–122, 126–134.) These allegations are not premised on a simple misunderstanding or breach of academic policy; they go to intentional, institutionalized misrepresentations designed to extract tuition payments.

The R&R glosses over this distinction by asserting that Plaintiff's claims are "undermined" by the fact that PCL "began communicating with the State Bar about these transcript discrepancies very quickly after the problem was brought to the school's attention." (Dkt. 348 at 15.) **But this serves as a factual inference against the Plaintiff, not a neutral observation.** In truth, Plaintiff has alleged, and the exhibits confirm, that:

1. PCL knew of transcript errors and systemic ineligibility (see Ex. 1 at 74–83; Ex. 9 at 172–76),
2. It selectively corrected those errors for one student (Nancy Popp),
3. While intentionally refusing to correct the same errors for others, including Plaintiff.

These allegations, taken as true, as they must be under *Twombly* and *Iqbal*, establish intentional concealment and material misrepresentation, not administrative confusion.

B. INTENTIONAL MISREPRESENTATION FOR FINANCIAL GAIN IS NOT A CONTRACTUAL DISPUTE—IT IS FRAUD

The R&R incorrectly treats these allegations as "implausible" or outside the scope of RICO, suggesting that no reasonable factfinder could find intent to deceive. But intent to defraud may be pled through circumstantial inference, especially where the alleged scheme involves:

1. A motive to conceal deficiencies,
2. Defendants subject to a higher professional or conduct standard (e.g., as licensed attorneys),
3. Selective correction of known errors, and
4. Financial or reputational benefit derived from deception.

The Ninth Circuit has repeatedly held that fraud under RICO may be inferred where defendants engage in conduct that foreseeably causes financial harm while concealing material facts. See

Eclectic Props. East, LLC v. Marcus & Millichap Co., 751 F.3d 990, 997–99 (9th Cir. 2014). The Plaintiff has met that standard here.

By alleging that Defendants knew they lacked authority to grant invalid credits, knew that they were operating in gross noncompliance, and nevertheless continued to charge tuition and issue transcripts that concealed this reality, Plaintiff has pled not just breach of contract, but actionable fraud under *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) and Mail & Wire Fraud under 18 U.S.C. §§ 1341, 1343 as RICO predicate acts given the nature and persistence of communication.

C. THE R&R IMPROPERLY RESOLVES A DISPUTED QUESTION OF FACT AT THE PLEADING STAGE

Even if Defendants ultimately claim the errors were inadvertent or due to administrative incompetence, the plausibility of Plaintiff's competing explanation, that the conduct was knowing and deliberate, cannot be rejected at the Rule 12(b)(6) stage. Yet the R&R does exactly that, asserting that Plaintiff's explanation is "illogical" and thus not actionable.

This reasoning improperly:

1. Ignores well-pled factual allegations, including internal admissions and partial transcript corrections,
2. Implies actionable misconduct must be "logical",
3. Draws inferences against the non-moving party, and
4. Resolves factual disputes about intent, knowledge, and institutional motive, which are squarely questions for a jury, not a magistrate judge.

The Ninth Circuit has repeatedly warned against conflating summary judgment analysis with the plausibility standard at the pleading stage. See *Eclectic Props.* (Supporting that the determination of

whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.) Docket 348 ignores that directive.

D. THE PATTERN OF CONDUCT ALLEGES RACKETEERING ACTIVITY UNDER RICO

Finally, the R&R overlooks that repeated use of the mails and wires to solicit tuition payments while omitting or misrepresenting bar eligibility and accreditation constitutes classic racketeering conduct. See 18 U.S.C. § 1961(1); Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 364 (9th Cir. 2005) (reversing dismissal of RICO claim where allegations plausibly described scheme to defraud through repeated communications).

The pattern alleged here:

1. Spans multiple years,
2. Affects multiple victims,
3. Involves institutional actors in coordinated misrepresentations.

This is precisely the type of systemic fraudulent conduct that RICO was designed to address. Dismissing these allegations as a mere "contract dispute" is not only a factual distortion, it is legally erroneous.

Here, the R&R likely errs in treating Plaintiff's fraud-based RICO allegations as a private contractual matter. The allegations set forth in the Fourth Amended Complaint, supported by incorporated exhibits, detail a plausible and well-supported scheme to defraud, falling squarely within the scope of predicate acts under RICO.

VI. PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S MISAPPLICATION OF RULE 9(B) IN RICO ANALYSIS

The Recommendations assert that Plaintiff's allegations "do not comply with Rule 9," suggesting a failure to identify "the time, place, and specific content of the false representations" or "the identities of the parties." This conclusion is legally and factually erroneous.

A. REPRESENTATIVE ACTS ARE PERMISSIBLE UNDER RULE 9(B)

Where fraud occurs over time and involves multiple communications and actors, Rule 9(b) allows for representative examples in lieu of exhaustive detail. The Ninth Circuit has explicitly held that "[t]he requirement may be relaxed where the fraud occurred over a period of time and the details are within the defendants' knowledge." *United States v. Woods*, 335 F.3d 993, 998 (9th Cir. 2003).

Here, Plaintiff has alleged representative predicate acts with specificity:

1. Dates of transcript issuance and alteration;
2. Defendants Peña and Bouffard's involvement in misrepresenting financial conditions (supported by CPRA responses);
3. Communications by Zuniga and Spiro tied to false accreditation assurances;
4. Specific harms to Plaintiff, including bar ineligibility, transcript refusal, and reputational injury.

These satisfy Rule 9(b) under applicable standards, particularly in the RICO context.

B. RICO ALLOWS FOR GROUP CONDUCT ALLEGATIONS

The Magistrate improperly dismisses coordinated acts as "generalized" and claims intent and timing are unclear. But the Ninth Circuit allows plaintiffs to allege collective conduct so long as the pleadings "inform each defendant of his or her alleged role in the fraud." *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007). The Fourth Amended Complaint, and the Fifth Amended Complaint (5AC) which the Magistrate improperly ignores, does exactly that:

1. Spiro is alleged to have altered transcripts and selectively corrected records (Ex. D).
2. Peña admitted in email communications to inaccuracies and misstatements concerning accreditation and student records.
3. Bouffard was directly involved in budget and solvency representations.
4. Zuniga and Aramayo played key roles in curriculum misrepresentations and accreditation filings.

These are not vague allegations; they are targeted and factually anchored.

VII. THE R&R ERRS BY EQUATING VARIABILITY IN KNOWLEDGE OF SPECIFIC ACTS WITH A LACK OF AWARENESS OF THE OVERALL FRAUDULENT SCHEME

The R&R implies that Plaintiff's allegations are insufficient because they do not demonstrate with precision that each defendant individually knew of or participated in every discrete misrepresentation, particularly in connection with improper unit awards or transcript manipulations. (Dkt. 348 at 14–15.) But this reasoning misstates both the legal standard for RICO liability and the factual theory pled in the Fourth Amended Complaint.

A. LACK OF UNIFORM KNOWLEDGE OF EVERY DETAIL DOES NOT NEGATE LIABILITY UNDER RICO

Plaintiff does not allege that every defendant was involved in every single fraudulent act. Rather, Plaintiff alleges that each defendant knowingly participated in, contributed to, or ratified acts that furthered a coordinated scheme to mislead students and regulators about PCL's institutional integrity and bar eligibility.

Under RICO, it is not necessary that each participant be involved in every predicate act. Instead, it is sufficient that each defendant:

1. Was associated with the enterprise,

2. Knew of its general purpose, and

3. Willfully participated in at least some aspect of the fraudulent conduct.

See *United States v. Fernandez*, 388 F.3d 1199, 1230 (9th Cir. 2004) ("The defendant must have known the general nature of the enterprise and knowingly agreed to further its goals."); see also *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007).

The R&R fails to apply this standard and improperly demands individualized scienter for every act, something not required by RICO jurisprudence.

B. WILLFUL BLINDNESS, RECKLESSNESS, AND INSTITUTIONAL POSITIONING ARE SUFFICIENT TO INFER KNOWING PARTICIPATION

To the extent any Defendant claims they were unaware of particular transcript discrepancies or specific misstatements, the Complaint, and attached exhibits, support a reasonable inference of willful blindness or reckless disregard.

Key facts supporting this inference include:

1. Internal emails acknowledging systemic errors in unit awards and accreditation misstatements,

2. The selective correction of records for one favored student (Nancy Popp) while others, including Plaintiff, were ignored (Ex. 1 at 74–83; Ex. 9 at 172–76),

3. Multiple actors occupying positions of responsibility, such as Dean, Registrar, or Financial Officer, with oversight over curriculum, communications, and transcript integrity.

In this context, a defendant's failure to act, investigate, or correct known defects, while continuing to extract tuition and represent compliance, is most likely not mere negligence. It is conscious avoidance or institutional recklessness, which courts routinely treat as indicative of fraudulent intent. See *Global-Tech Appliances v. SEB S.A.*, 563 U.S. 754, 769 (2011) (willful blindness is equivalent to knowledge in the fraud context); *United States v. Heredia*, 483 F.3d 913, 926 (9th Cir. 2007) (en banc).

C. THE PATTERN ALLEGED IS OF INSTITUTIONAL FRAUD, NOT INDIVIDUAL ERROR

The R&R's reasoning isolates each communication or alleged misstatement, requiring a granular assignment of intent. But Plaintiff has alleged a systemic pattern of racketeering activity:

1. Communications to students misrepresenting bar eligibility,
2. Falsified or selectively corrected transcripts,
3. Financial misrepresentations made over multiple years.

The alleged scheme was institutional in nature, and it involved the regular use of mail and wire communications to further a fraudulent goal. Where a complaint alleges that certain defendants held roles in overseeing student records, financial matters, curriculum design, or regulatory correspondence, the law permits inference of knowledge or reckless participation.

Courts do not require that every participant be the original architect of the scheme. It is sufficient that they knowingly joined it, furthered it, or failed to stop it despite their duty to do so.

To the extent that any Defendant lacked precise knowledge of a given transcript error or financial misstatement, this does not negate the sufficiency of the RICO pleading. Plaintiff has

alleged that each defendant had actual or constructive knowledge of the enterprise's fraudulent purpose, and that each acted with recklessness or willful disregard for its consequences.

VIII. INTENT MAY BE PLEADED CIRCUMSTANTIALLY

The assertion that the Court "cannot determine whether the miscommunications were intentional or merely negligent" imposes a standard that is inapplicable at the pleading stage.

Under *Eclectic Properties East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990 (9th Cir. 2014), intent to defraud can be inferred where the plaintiff alleges:

1. A plausible motive;
2. Repetitive or systemic conduct; and
3. Foreseeable harm.

Plaintiff alleges:

1. Defendants had motive to conceal PCL's accreditation failures and financial collapse to retain tuition;
2. Conduct spanned over five years, and included numerous false representations and omissions;
3. Harm to Plaintiff was direct and foreseeable, including invalid transcripts, bar disqualification, and professional injury.

These facts support a plausible inference of fraudulent intent.

IX. THE R&R IMPROPERLY CONCLUDES THAT PLAINTIFF HAS NOT SUFFICIENTLY ALLEGED HARM

The Report and Recommendation errs in asserting that Plaintiff has failed to allege actionable harm. Both the **Fourth Amended Complaint (4AC)** and the **proposed Fifth Amended Complaint (5AC)** plead, in detailed and factually supported terms, the actual and proximate injuries suffered by Plaintiff as a result of an ongoing fraudulent scheme and discriminatory institutional conduct.

Notably, the R&R fails to address one of Plaintiff's essential claims, that the scheme was defined to capture and retain students to prevent, or otherwise improperly disincentivize transfer, after the students passed the requisite First Year Law Student Exam or otherwise inevitably discovered PCL's fundamental inadequacies. (See FAC ¶¶ 107, 112 and 125)

The record, supplemented by judicially noticed evidence under Docket 199, confirms a **timeline of knowing misrepresentation, selective remediation, regulatory evasion, and retaliation**. These allegations are not conclusory; they are grounded in **documented communications, CPRA disclosures, and internal PCL correspondence** between 2019 and 2024.

A. ENROLLMENT BASED ON FRAUDULENT MISREPRESENTATIONS

Plaintiff alleges that he enrolled and remained at Peoples College of Law (PCL) based on repeated misrepresentations by Defendants regarding:

1. The school's **accreditation and compliance** with State Bar rules,
2. The **validity of its bar eligibility pathway**,
3. And its **financial solvency and academic integrity**.

These representations were knowingly false and contradicted by internal communications, including emails from Peña to the State Bar (Dkt. 199, Ex. C) and Spiro's admissions regarding "credit inflation" and improper transcript adjustments.

Specifically detailed in the FAC related to Plaintiff's enrollment and retention at PCL based on false representations regarding accreditation, educational program, bar eligibility, and solvency include:

a. ¶ 45, 102: States that PCL distributed information through "promotional emails, student handbooks, and enrollment forms" representing that the school

complied with accreditation standards and provided a valid bar-qualifying path between 2019–2024;

b. ¶ 85-87: Identifies defendant involvement in communications concealing financial insolvency and noncompliance with State Bar credit regulations.

c. ¶ 95: Alleges continued false statements to students and regulators through 2023, including failure to disclose ongoing transcript irregularities and structural noncompliance.

f. ¶ 107: Spiro's admitted transcript manipulation is cited as part of this broader scheme. It describes a communication where Spiro modifies a transcript for Nancy Popp after she raised concerns with the State Bar. Plaintiff contrasts this with his own experience, where similar transcript corrections were denied. He alleges this disparity was "aimed at preventing other students from discovering defects in their own transcripts or pursuing transfer options."

g. ¶ 112: Expands on ¶ 107 by stating that the concealment of errors "served to limit the ability of affected students to exit the program or seek alternative remedies", a tactic Plaintiff links directly to scheme survival and economic self-preservation.

h. **¶ 125** further links retaliatory conduct to efforts to **retain control** over disaffected students who questioned administrative practices.

B. DENIAL OF EDUCATIONAL SERVICES AND SELECTIVE TRANSCRIPT CORRECTIONS

Plaintiff was denied:

1. **Equal access to academic credit corrections**, despite widespread transcript errors dating back to 2019;
2. **Timely and accurate advisement**, including warnings that his coursework may not satisfy bar eligibility;
3. **Corrections made selectively** for students like Nancy Popp (Ex. 1), while Plaintiff and others were left with defective records.

The emails show Spiro retroactively changed Popp's transcript after consultation with the State Bar but **declined to inform similarly situated students**. This was not incompetence, it was a strategic concealment and protectionist maneuver that injured Plaintiff directly.

C. DENIAL OF A DEGREE AND BAR-QUALIFYING TRANSCRIPT; REGULATORY DEPRIVATION

Despite completing the required coursework under PCL's own misapplied rules, Plaintiff was denied a transcript that met bar exam eligibility criteria. This denial:

1. Delayed his licensure for **multiple years**;
2. Foreclosed job opportunities for which he was otherwise qualified;
3. Forced him to re-enroll in substitute coursework at great expense;
4. Resulted in **procedural exclusion** from the California bar pipeline .

The April 2022 CPRA-disclosed emails (Dkt. 199, Ex. C) demonstrate that the State Bar advised PCL of its transcript errors, yet PCL failed to notify or correct the records of affected students, including Plaintiff.

C. FINANCIAL, REPUTATIONAL, AND PROFESSIONAL HARM

Plaintiff pleads:

1. Tangible **financial loss** tied to delayed professional entry;
2. **Reputational harm** in both legal and academic spheres;
3. **Emotional distress** from academic exclusion, defamation, and retaliation;
4. **Ongoing expenditure of time and resources** to repair institutional damage.

The misrepresentations and omissions directly impaired Plaintiff's ability to access employment, clerkships, and legal status. This is precisely the kind of harm recognized in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 654 (2008), where RICO liability attaches upon injury to property or business interests, even without first-party reliance.

D. RETALIATION AND CIVIL RIGHTS VIOLATIONS

The Recommendations further err in asserting that harm is not sufficiently alleged. But the 4AC and 5AC plead that:

1. Plaintiff enrolled in PCL based on misrepresentations, including actual accreditation compliance and solvency;
2. Plaintiff was denied services;
3. Plaintiff was denied a degree;
4. Plaintiff was denied a bar-exam qualifying transcript;
5. Plaintiff suffered reputational harm and delay in professional licensure.
6. Stripped of student government positions;
7. Excluded from key academic meetings and communications;
8. Misrepresented in internal and external communications, including to the State Bar and donors;

9. Denied timely access to educational records, in violation of PCL's fiduciary and FERPA obligations.

10. That the Defendants, including Pena, made erroneous reports to State Agencies, including the Secretary of State and the State Bar in furtherance of the scheme.

These actions were not isolated, they formed part of a pattern of retaliation, likely in violation of 42 U.S.C. § 1983 (retaliation for protected advocacy) and § 1985(2) (obstruction of legal rights and class-based animus).

The above, both individually and in combination, satisfies RICO's injury and proximate cause standard. See *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 654 (2008) (RICO plaintiffs need not show first-party reliance, only that the fraud caused injury).

X. APPARENT STRUCTURAL PREJUDICE AND DIMINISHED NEUTRALITY

The Court has allowed dispositive motions by Defendants to proceed to ruling, while dispositive motions filed by Plaintiff, including Dkt. 197, Dkt. 199, and Dkt. 286, remain unaddressed or are accompanied by procedural vagueness. This selectivity is not merely inefficient; it has operated as a one-sided filter on the case's progression. The Court's refusal to timely or clearly rule creates de facto denials insulated from review, thereby nullifying Plaintiff's right to be heard.

For example, the dispositive order issued by the Court (Dkt. 312) did not address Plaintiff's ripe and pending FRE 201 submissions. Those filings contain judicial admissions, public records, agency disclosures, and CPRA responses, factual material that bears directly on dispositive claims. As alluded to above, at least one specific filing was delayed entry from the record for inordinate period and was not docketed until after repeated notices to the Court were filed by Plaintiff. (See Docket 305)

XI. PATTERN OF PROCEDURAL INVERSION AND ADVERSARIAL DISTORTION

The Court's practices appear to have materially inverted the adversarial process. Where Plaintiff acts with timeliness and procedural discipline, the Court delays; where Defendants deflect, evade, or reengage improperly, the Court ignores or proceeds without rebuke.

This pattern is not speculative; it is demonstrable. Plaintiff's "Third Notice of Constructive Denial" (Dkt. 342) was filed on June 30, 2025, to preserve the integrity of the record amid mounting docket irregularities. It documented multiple unresolved motions—including critical FRE 201 judicial notice requests and Dkt. 286—and was not docketed until July 3, 2025, despite Plaintiff's contemporaneous filings (e.g., his July 2 reply) alerting the Court to its pending status. This was not an isolated clerical delay. It reflects a recurring delay pattern in processing Plaintiff's filings, even when they serve core procedural functions, e.g., record preservation, Rule 54(b) invocation, and motions related to judicial integrity.

This procedural imbalance culminated in the docketing of Docket 348 (Report & Recommendation) and the subsequent docketing of Docket 350, on July 22, 2025. Notably, Docket 350 was filed by the Plaintiff, with courtesy notice sent to both defense counsel and chambers, after hours, on July 17, 2025.

First, Docket 350 documents a clear violation of Local Rule 7-3 by defense counsel. Exhibits A through C to Plaintiff's July 17 filing lay out a sequence of communications that show not only procedural evasion, but a deliberate refusal to discuss the merits of the contemplated motion, in violation of both the letter and spirit of Local Rule 7-3. Haight and Spiro are shown, through contemporaneous emails, to have drafted a Vexatious Litigant (VL) motion in full prior to engaging in the required meet-and-confer process. Notably, defense counsel explicitly admitted that their

Vexatious Litigant motion was "fully prepared" prior to the required meet-and-confer, a procedural formality they neither respected nor intended to follow in substance. This admission, now preserved in Exhibit A to Docket 350, destroys the presumption of good faith and renders the entire Local Rule 7-3 exchange a manufactured predicate for sanctions.

This conduct is not only noncompliant but demonstrably in bad faith.

Docket 350 further contains emails from Haight counsel that facially confirm a longstanding pattern of similar conduct, that Plaintiff has previously noticed in the past. (See Exhibit B)

Furthermore, as Exhibit C of Docket 350, no fewer than five emails over the course of three weeks, received by Plaintiff from Defendant Spiro are included.

Yet Docket 348, the Magistrate Judge's Report and Recommendation, makes no mention of these facts and concludes without explanation that there was no sanctionable conduct by Defendants or their counsel. The failure to engage with the evidentiary record submitted just two days earlier constitutes more than oversight; it can be reasonably inferred, and in fact strongly suggests, a deliberate omission of dispositive material timely submitted by the Plaintiff that the Court was noticed about prior to release of its R&R.

Second, Dockets 197, 199, 329, and 332, each timely, some unopposed, and grounded in Federal Rule of Evidence 201, contain judicially noticed records establishing transcript manipulation, CPRA violations, and sworn contradictory statements by Defendant Spiro. These filings have in several instances remained unaddressed for months, and the R&R fails even to acknowledge their existence. The omission of this uncontested and material evidence not only undermines the integrity of the R&R's conclusions but also disregards binding Ninth Circuit authority, such as *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018), which requires courts to consider

judicially noticed documents in evaluating dispositive matters. By ignoring this evidence, the Court deepens the appearance of institutional complicity.

Third, the R&R was issued after Plaintiff filed Docket 350, yet it fails to reference or engage with the substance of that filing. Whether due to pre-drafted issuance or strategic exclusion, this temporal irregularity constitutes a procedural breach: a dispositive recommendation was rendered without consideration of the most recent, highly relevant procedural record. Such omissions render the recommendation facially incomplete and procedurally vulnerable.

Fourth, the R&R attempts to draw an equivalency between the parties' conduct, suggesting that both sides may have engaged in excessive motion practice. This framing ignores the undisputed reality that Plaintiff's filings have been largely responsive, to defense motions, Court orders, or to preserve appellate rights, whereas Defendants have submitted unauthorized declarations, evaded meet-and-confer obligations, and repeatedly misrepresented the procedural record. By applying a false parity, the Court discredits the evidentiary imbalance and gives an unjustified benefit of neutrality to parties whose conduct is facially unclean.

Together, these discrepancies invert the adversarial process. Plaintiff's well-documented claims of procedural misconduct have not been contested on the merits, but are nonetheless disregarded. Meanwhile, Defendants' conduct is sanitized through omission. When uncontested misconduct is rendered non-sanctionable and decisive filings are ignored, the Court ceases to function as a neutral arbiter and instead becomes a participant in procedural insulation. This distortion of process demands correction under Rule 59(e), Rule 60(b), or, if necessary, through appellate intervention.

The R&R's silence on this misconduct cannot be divorced from the broader institutional context, where acknowledging defense violations would not only validate Plaintiff's underlying

claims, but potentially implicate prior rulings tainted by what is effectively procedural suppression, docket management inconsistencies or unwarranted dismissals.

The prejudice to Plaintiff is substantial: dispositive credibility recommendations were made against him while undisputed evidence of defense misconduct was ignored. The failure to weigh these materials undercuts the fairness of the proceeding and may establish grounds for vacatur under Rule 60(b)(1), (3), and (6), as well as structural appellate error.

XII. CONCLUSION

Taken as a whole, the R&R is marred by a series of interlocking legal, procedural, and factual errors that render it unreliable as a basis for dismissal. Most notably, it ignores the operative Fifth Amended Complaint (5AC), which was filed pursuant to Rule 15(a)(2) and in response to the Court's own procedural invitation.

The R&R also mischaracterizes Plaintiff's well-pleaded allegations of systemic fraud as mere contractual disputes, despite supporting exhibits, judicially noticeable documents, and specific factual averments establishing a coordinated scheme to defraud through false representations about accreditation, bar eligibility, and academic credit.

Compounding these issues, the R&R applies summary judgment logic at the pleading stage, impermissibly resolving factual disputes about intent, materiality, and institutional knowledge that must be left to a jury. The R&R also improperly demands individualized scienter for each Defendant while ignoring controlling Ninth Circuit precedent that permits RICO plaintiffs to plead group conduct so long as individual roles are sufficiently defined and tied to the enterprise.

Perhaps most troublingly, the R&R proceeds without acknowledging Plaintiff's pro se status, and without adequately affording recognition of the procedural discipline, legal framing, and evidentiary documentation reflected in his filings.

Plaintiff respectfully requests that the Court:

1. Preserve the R&R's favorable findings regarding Rule 8 sufficiency;
2. Conduct de novo review of the R&R's recommendation to dismiss the RICO claim;
3. Reject the R&R's flawed legal conclusions regarding Rule 9(b), intent, pattern, enterprise, and standing;
4. Grant leave to amend, if necessary, based on the proposed Fifth Amended Complaint and pending Rule 15(a)(2) motion. Plaintiff's 5AC represents a diligent and good-faith effort to cure prior alleged pleading defects, responding directly to collective critiques, incorporating judicial admissions and evidence.

Federal Rule of Civil Procedure 15(a)(2) mandates that courts "freely give leave [to amend] when justice so requires." The Ninth Circuit has consistently interpreted this rule with "extreme liberality," particularly for pro se litigants, emphasizing that dismissal without leave to amend is proper only in the clearest cases of futility, undue delay, or bad faith.

For these reasons, and those more fully set forth above, Plaintiff respectfully objects to the R&R in its entirety and requests that the District Court reject its recommendation, permit consideration of the 5AC, and allow Plaintiff's claims, particularly the fraud-based RICO allegations, to proceed on the merits.

To the extent the District Court adopts the Report and Recommendation without correcting the material omissions and legal errors outlined herein, Plaintiff reserves all rights under Rule 59(e) and Rule 60(b) to seek appropriate post-judgment relief, and under 28 U.S.C. § 1291 to appeal any final adverse determination.

Respectfully submitted,

Dated: July 23, 2025

Todd R. G. Hill
Plaintiff, In Propria Persona

STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1

The undersigned party certifies that this brief contains 7,000 words, which complies with the 7,000-word limit of L.R. 11-6.1.

Respectfully submitted,

July 23, 2025
Todd R.G. Hill
Plaintiff, in Propria Persona

Plaintiff's Proof of Service

This section confirms that all necessary documents will be properly served pursuant to L.R. 5-3.2.1 Service. This document will be/has been electronically filed. The electronic filing of a document causes a "Notice of Electronic Filing" ("NEF") to be automatically generated by the CM/ECF System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court and (2) all pro se parties who have been granted leave to file documents electronically in the case pursuant to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service through the CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by Fed. R. Civ. P. 4 or L.R. 79-5.3, service with this electronic NEF will constitute service pursuant to the Federal Rules of Civil Procedure, and the NEF itself will constitute proof of service for individuals so served.

Respectfully submitted,

July 23, 2025
Todd R.G. Hill
Plaintiff, in Propria Persona